CONGRESSMAN SHERWOOD BOEHLERT (R-NY)
FLOOR STATEMENT ON ENDANGERED SPECIES ACT
September 29, 2005

Mr. Chairman:

I rise in opposition to the bill. I have no quarrel with the stated purpose of the bill – to reform the Endangered Species Act. I think there is broad and justifiable consensus that the Act is overdue for reform.

But "reforming" the law should not be a euphemism for "gutting" the law, and that's what this bill would do. I urge my colleagues to look beyond the descriptions of the bill and to examine the bill itself.

The most advertised feature of the bill is that it gets rid of the current "critical habitat" provisions of the law and replaces the habitat requirements with flexible, comprehensive, science-based "recovery plans." Sounds pretty good. And it would be pretty good if that were a full description of what the bill did. But what the sponsors have obscured is that, under the bill, the recovery plans are utterly unenforceable. No one ever has to abide by them. Not only that, the plans will be written through a process that guarantees delay, but does not guarantee that the best science will be used.

So is there a way to get rid of the current "critical habitat" burdens and to use recovery plans without weakening the law? Of course there is. And our Bipartisan Substitute shows how. We eliminate all the provisions of current law that require critical habitat designations just as in H.R. 3824, but we make recovery plans enforceable and we ensure that they have a strong scientific basis. That's how you get real reform while still protecting real species.

It's not impossible to balance the need for reform with the need to protect species. But instead, we have a bill before us that is balanced in its rhetoric, but not in its effect.

The bill weakens just about every feature of law designed to protect species – for example, the review of federal actions to make sure they do not unduly harm species.

Now I am not trying to suggest that H.R. 3824 is all bad news. In fact, many of its provisions – the incentives for landowners to protect species, the public information requirements, the requirements to better involve the states – are largely improvements to the law. That's why our Substitute includes all those provisions, often in language identical to that in H.R. 3824.

But there is one provision of H.R. 3824 that our Substitute does not include at all. And that's Section 13, which creates an open-ended entitlement that will open the federal treasury to provide mandatory payments to developers. This is a bad idea on philosophical and legal grounds, but this is an especially bad time to expose taxpayers to such a burden.

And every element of Section 13 makes the bill still worse by making it nearly impossible to protect the taxpayer from illegitimate claims. Can someone seek repeated payments for the same piece of property? Yes. Can someone seek payment even if the proposed project could be accomplished on another portion of his property? Yes. Can the government require the developer to document his claim before paying out taxpayer funds? No. Can the developer prevent a fair appraisal of the property by requiring the use of questionable appraisers? Yes. Can someone get a payment even if his proposed project hasn't yet been approved by state and local authorities? Yes.

The list of indefensible features of this provision just goes on and on. The provision turns the assumptions of property law – assumptions designed to protect the taxpayer – on their head.

We don't have to endanger taxpayers in order to reform the Endangered Species Act. We don't have to make it easier for species to become extinct to reform the Endangered Species Act. All we need to do to inform the Act is to make sure that common sense isn't trumped by ideology.

I urge my colleagues to defeat H.R. 3824, which just waves the banner of reform to distract attention from its actual content. Vote instead for real reform. Vote for the Bipartisan Substitute. Thank you.